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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Concerning Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluation, and Related Issues.

Rulemaking 13-11-005

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S
RULING AND AMENDED SCOPING MEMORANDUM
(REGARDING REMAINDER OF PHASE III)**

Summary

This Scoping Memo and Ruling sets forth the category, issues, need for hearing, schedule, and other matters necessary to scope the remainder of Phase III of this proceeding, pursuant to Public Utilities Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.¹

1. Procedural History

This rulemaking is the most recent in a series of ongoing proceedings conducted by the Commission, providing a venue for policy changes and regulatory oversight associated with the energy efficiency programs of the large investor-owned electric and natural gas utilities, community choice aggregators (CCAs), and regional energy networks (RENs).

Phase I of this proceeding addressed 2015 funding and concluded with Decision (D.) 14-10-046. The first portion of Phase II (Phase IIa) concluded by establishing the basic rules for a rolling portfolio for energy efficiency programs in D.15-10-028.

¹ California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

Phases IIb and IIIa, covered by the scoping memo issued October 30, 2015, were completed in D.16-08-019, which primarily gave guidance for the filing of the first business plans under the rolling portfolio framework, as well as the setting of baselines used to estimate energy savings.

A scoping memo was issued November 2, 2016 covering the rest of Phase III of this proceeding. However, completing Phase III has been substantially delayed due to consideration of the energy efficiency rolling portfolio business plans filed January 17, 2017 in Applications (A.) 17-01-013 et al.

Thus, this amended scoping memo updates the expected scope and schedule for the remainder of this proceeding.

2. Scope

Because it has been nearly 18 months since the previous amended scoping memo was issued in this proceeding, we refresh our own and parties' expectations about the remaining issues to be addressed in this rulemaking, after which we will likely open a new rulemaking to address additional ongoing energy efficiency policy issues.

Items in the scope of the remainder of Phase III and discussed below include: 1) the three-prong fuel substitution test, 2) market transformation, 3) custom projects, and 4) accounting and funding issues. In addition, this rulemaking remains the appropriate venue for overarching policy issues related to administration of the energy efficiency policies, portfolios, and programs. Thus, Section 2.5 below contains a number of items that remain in scope, but where we have no current planned activities. Those items are also listed below.

2.1. Three-Prong Fuel Substitution Test

On June 8, 2017, Natural Resources Defense Council, Sierra Club, and the California Efficiency and Demand Management Council (Council), (collectively, the Moving Parties), filed a motion seeking review and modification of the three-prong fuel substitution test (Test). This Test requires that a fuel-substitution program or project,

whether applied to retrofit or new construction applications, must pass the following three-prong test to be considered eligible for energy efficiency funding incentives:

- a) The program/measure/project must not increase source-BTU consumption. Proponents of fuel substitution programs should calculate the source-BTU impacts using the current CEC - [California Energy Commission] established heat rate.
- b) The program/measure/project must have TRC [total resource cost] and PAC [program administrator cost] benefit-cost ratio of 1.0 or greater. The TRC and PAC tests used for this purpose should be developed in a manner consistent with Rule IV.4.
- c) The program/measure/project must not adversely impact the environment. To quantify this impact, respondents should compare the environmental costs with and without the program using the most recently adopted values for avoided cost of emissions. The burden of proof lies with the sponsoring party to show that the material environmental impacts have been adequately considered in the analysis.²

Specifically, the Moving Parties request that the Commission address the following issues in Phase III of this proceeding:

- 1) Review the Test for clarity, utility, and alignment with Commission policies and California's climate goals; modify the Test as needed and provide clear guidance on the methodology and baseline for conducting the Test.
- 2) Clarify under what conditions the Test must be passed (e.g., for substitution of regulated fuels vs. substitution between regulated and unregulated fuels such as propane and wood), and consider modifying Commission policy to enable switching between regulated and unregulated fuels when key policy objectives are met.
- 3) Provide guidance, with example cases, on how projects or programs that include fuel substitution will be assessed using the Commission's

² California Public Utilities Commission. 2013. Energy Efficiency Policy Manual, R.09-11-014, Version 5, July 5, 2013, pages 24-25:
[http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy -
Electricity_and_Natural_Gas/EEPPolicyManualV5PDF.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy_-_Electricity_and_Natural_Gas/EEPPolicyManualV5PDF.pdf).

standard cost-effectiveness tests that are required of all energy efficiency programs.

On June 23, 2017, the Office of Ratepayer Advocates (ORA), Pacific Gas and Electric Company (PG&E), and Southern California Gas Company (SoCalGas) submitted responses to the Motion from the Moving Parties. ORA and PG&E supported the motion from the Moving Parties. Specifically, ORA contends that this rulemaking is a logical venue for reviewing the Test since it impacts the cost-effectiveness of energy efficiency measures and portfolios and currently only applies to energy efficiency fuel substitution measures. In addition, ORA proposes that the scope of the Test's review include consideration of the circumstances in which fuel substitution will likely result in system benefits that accrue to ratepayers such that ratepayer funding is appropriate.

PG&E also agrees that the Test should be reviewed for clarity, utility, and alignment with Commission policies. However, PG&E refrains from opining on the need for modification of the Test at this time. Both ORA and PG&E propose a formal process to review the Test, including testimony and hearings, and ORA also proposes a staff workshop.

SoCalGas requests that the Commission deny the Motion. SoCalGas contends that the Motion is founded on a premise that is fundamentally flawed: that the requirement to demonstrate cost effectiveness poses an unfair barrier to advancing energy efficiency. However, SoCalGas agrees with the other parties that if the Commission is inclined to revisit the Test in Phase III of this proceeding, a process by which factual assertions and purported evidence claiming to support a change in the test can be scrutinized through discovery and cross-examination (i.e., including evidentiary hearings) should be instituted.

We agree with the Moving Parties that this proceeding is the appropriate venue to review and consider modifications to the Test, as it applies to energy efficiency fuel substitution measures only. Thus, we will grant the Motion and add this item to the scope of this proceeding. The scope of consideration of the Test will be limited only to its

application for determining whether funding is appropriate for energy efficiency projects and measures.

The review of the Test in this rulemaking will not examine the broader issues touched upon in the Motion about whether or how the Commission should pursue building electrification, or electrification in other sectors, as a priority policy to meet California's environmental goals. Those questions have broader implications than are appropriate to be addressed within this rulemaking.

In this rulemaking, we plan to examine the following questions:

1. What ambiguities exist with the current Test definition and/or implementation and what clarifications are needed?
2. What are the barriers, if any, for energy efficiency program administrators pursuing fuel substitution programs or projects, as they relate to the Test?
3. How should the Test be modified, if at all, to provide greater clarity and consistency when measuring fuel substitution programs, projects, or measures?
 - a. If applicable, how should "source BTU consumption" be defined and measured?
 - b. If applicable, how should the "baseline" be defined against which a proposed fuel substitution project is compared?
 - c. If applicable, how should "material environmental impacts" be defined?
4. Is the energy efficiency cost-effectiveness calculator adequate for calculating the cost-effectiveness of potential fuel substitution programs or are modifications to the calculator for these programs needed?
5. What is the appropriate efficiency savings accounting for interactive effects related to fuel substitution?
6. How should fuel substitution programs be funded? Should energy efficiency funds from natural gas customers pay for programs to substitute electricity with natural gas, and electricity customers pay to substitute natural gas with electricity? Or vice versa? What impact do these considerations have on cost-effectiveness calculations, if any?

Though requested by the Moving Parties, we are not yet convinced that testimony and evidentiary hearings will necessarily be required to answer the above questions. Thus, we will maintain this proceeding's designation that no hearings are required. However, we remain open to changing that designation should the progress of discourse on this topic (or any other within the remaining scope of this proceeding) warrant.

2.2. Market Transformation

Senate Bill (SB) 350, in creating Public Utilities Code Section 399.4 (d), provides that:

The commission, in a new or existing proceeding, shall review and update its policies governing energy efficiency programs funded by utility customers to facilitate achieving the targets established pursuant to subdivision (c) of Section 25310 of the Public Resources Code [requiring the setting of goals to achieve a doubling of energy efficiency savings by 2030]. In updating its policies, the commission shall, at a minimum, do all of the following:

Authorize market transformation programs with appropriate levels of funding to achieve deeper energy efficiency savings. [Emphasis added.]

In order to implement this requirement of SB 350 more fully, we anticipate taking several steps in this proceeding. These will take place following the disposition of the business plans, and will involve further work after those business plans are launched.

In D.16-08-019 we established the requirement that all existing market transformation programs be handled in a statewide manner. We recognize there is a need for more work in this area. In particular, there is a need to develop new or modified processes and protocols to accommodate the longer-term nature of market transformation strategies.

We anticipate circulating for parties' comments a staff proposal focused on practical recommendations for revising existing program requirements to suit longer-term market transformation strategies. This work may also involve one or more workshops.

The scope of this work may include the following issues:

1. Considering new processes and protocols to support market transformation initiatives that would allow for longer-term planning horizons, addressing cost-effectiveness and methodologies for recognizing energy savings.
2. Updating the Commission's adopted definition of "market transformation."
3. Reviewing evaluation, measurement, and verification (EM&V), ex ante savings estimation, and cost-effectiveness protocols for their suitability to market transformation.
4. Reviewing the approach to baseline setting and measure lifecycle benefits for market transformation.
5. Providing Commission guidance on administrative and governance issues.
6. Providing Commission guidance on budget levels and general priorities, activities, or criteria.
7. Providing Commission guidance on relationship to ongoing business plan sector strategies and statewide programs.
8. Assessing the appropriateness and structure of providing financial incentives to program administrators for conduct of market transformation initiatives, either through the Energy Savings Performance Incentive (ESPI) mechanism or another method.
9. Assessing lessons learned from prior market transformation efforts, such as the development of market transformation indicators and the conduct of previous market effects studies.
10. Reviewing the appropriate role for codes and standards and/or emerging technologies programs (or other programs such as workforce, education, and training programs) in market transformation.
11. Assessing the need for additional changes to the existing energy efficiency policy and accounting framework to support market transformation.

2.3. Custom Projects and Industrial Programs

D.16-08-019 discussed a number of aspects of custom projects, in particular in the industrial sector. The decision ordered a number of follow-up activities, which led to the issuance of Resolution E-4818, as well as the formation of the "Track 2 Working Group."

The working group met numerous times in 2017, publishing a report on September 7, 2017, that was circulated to the service list in this proceeding.³ In response to Resolution E-4818, the working group report provided participant positions for Commission resolution on:

- Task 1: Standard Practice Baseline Definition - Clarifying policy for how to determine code baseline related to industry standard practice (ISP).
- Task 2: Tiered Preponderance of Evidence Requirements – What should constitute Tier 1 and Tier 2 preponderance of evidence requirements?
- Task 3: Repair-Eligible/Repair-Indefinitely – Qualification standards and documentation requirements to identify repair-eligible and repair-indefinitely measure types.
- Task 4: Small-Sized Business Customer Definition - Qualification standards and documentation requirements to identify a small-sized business customer.

Commission staff is preparing a draft resolution for Commission consideration in response to the working group report to address the above issues.

The working group report also discussed two issues directed in D.16-08-019 that did not have an assigned deadline. Commission staff and the working group are working towards timely development and adoption of streamlined guidance for these issues.

Those tasks are:

- Task 5: ISP Guidance – To address “the development and application of Industry Standard Practice (ISP) determinations” and “revisions to the ISP guidance document.”⁴
- Task 6: Custom Streamlining – To “allow stakeholder input on the custom review process, and the development of a streamlined approach.”⁵

³ Available at:
http://t2wg.cadmusweb.com/Documents/Final%20Reports/T2WG_Report1_Final_20170907.pdf.

⁴ D.16-08-019 at 40-41.

On Task 5, ISP Guidance, PG&E staff has taken the lead role to identify issues and propose improvements to the ISP Guidance Document. The working group has discussed and identified issues and expects to continue development of recommendations to update the guidance document and ISP protocols. The new guidance is expected to be released in draft form by the end of 2018 for stakeholder and Commission staff review in a public process.

On Task 6, as one part of streamlining the custom review process, Commission staff developed, in collaboration with the utility program administrators, a protocol for timely exchange of documentation. The protocol only covers the review exchanges between Commission staff and the program administrators. Commission staff plan to restart working group meetings in May 2018 and will discuss the protocol, planned to be implemented by June 2018.

Although implementation of this protocol will not address all ideas proposed for streamlining the review process, Commission staff believes that improving the timing of the exchange of documentation between the utility program administrators and the Commission is a key and first element that needed to be addressed. Commission staff expects that the other aspects of streamlining will be discussed during the working group meetings and lead to further process enhancements to be implemented during 2018. Commission staff plans to develop a living document to memorialize the agreed-upon custom process enhancements for implementation and make it available on the Commission's website. Commission staff will also propose a process and schedule to update this living document, as appropriate.

As these activities are addressed in the working group process, Commission staff may bring items to the Commission for further clarity or direction, if needed, on any of the above tasks.

⁵ *Ibid.*

In addition, Commission staff has posted a guidance document related to accounting for savings at sites with on-site generation. The document is titled “Energy Efficiency Savings Eligibility at Sites with non-IOU Supplied Energy Sources” and is available on the Commission’s website at:

<http://www.cpuc.ca.gov/General.aspx?id=4133>.

Finally, there has been stakeholder and program administrator discussion about whether the custom review process will be applied to the strategic energy management (SEM) programs. We clarify that we do not expect the SEM program itself to be part of the custom review process. However, during the course of the SEM engagement, customers may identify specific custom projects they wish to implement in order to receive ratepayer-funded incentives. The development of those custom projects and the determination of savings for those projects will be eligible for ex ante review and subject to ex post evaluation.

Additional still-relevant topics related to further work in the industrial sector and on custom projects include: third-party payment structures, to the extent not addressed in the contract terms and conditions elements being addressed in A.17-01-013 et al.; as well as realization rates and net-to-gross trends in custom projects.

2.4. Accounting and Funding Issues

Earlier in this proceeding, activities were initiated with the purpose of standardizing and streamlining how the various program administrators account for categories of energy efficiency funding from year to year. From various workshops, hearings, and audits held in the past in this proceeding, it is clear that a common set of rules for all program administrators to follow would aid in appropriate accounting and tracking, as well as understanding of the status of budget, funding, and spending levels.

This phase of the proceeding will address issues including, but not limited to, budgets and revenue requirements, expenditures and unspent funds, commitments, allowable expenses for different cost categories, budget caps and targets, and fund shifting.

2.5. Ongoing Policy Issues

Though we do not anticipate the need for near-term decisionmaking in these ongoing issue areas, should a need arise, this proceeding will still be the venue for undertaking the following ongoing and new work:

- Policy coordination issues associated with the adoption and implementation of the business plans in A.17-01-013 et al.
- Necessary updates to the ESPI mechanism, including potentially to account for the change in statewide program governance structure, and the move toward a larger percentage of programs being run by third parties, CCAs, and/or RENs.
- Necessary updates to energy efficiency potential and goals. Includes policy coordination issues related to the interaction between energy efficiency goal-setting and the Commission's integrated resource planning work taking place in R.16-02-007.
- Necessary updates to the Database for Energy Efficiency Resources.
- Necessary updates to the EM&V framework.
- Necessary updates to the third-party solicitation framework articulated in D.18-01-004, as the process gets underway.
- Commission oversight over CCA energy efficiency programs and budgets.
- Commission oversight of reasonableness of budgets and spending relative to the SB 350 "doubling" goal for energy efficiency.
- Approaches for evaluations using normalized metered energy consumption and/or dynamic baselines.
- Necessary clarifications related to accounting for energy efficiency savings claims.
- Necessary updates to any energy efficiency sector or customer designation definitions.
- Coordination with the statewide marketing, education, and outreach (ME&O) efforts under the Energy Upgrade California brand.
- Financing programs, including the following aspects:
 - The pilot programs being overseen by the California Alternative Energy and Advanced Transportation Financing Authority, and the associated ME&O activities,

- Potential proposals for new, innovative types of energy efficiency finance programs,
- Potential proposals for pay-as-you-save programs,
- Potential proposals for other forms of utility-arranged financing or tariffed offerings, or
- Potential revisions to existing on-bill financing approaches.
- Additional review, if needed, of the REN pilot programs.
- Necessary updates to the cost-effectiveness framework for energy efficiency, especially if the integrated distributed energy resource (IDER) rulemaking (R.14-10-003) updates demand-side cost-effectiveness methodologies to address a societal cost test and/or the social cost of carbon, as is being contemplated there.
- Locational targeting or sourcing of energy efficiency, in coordination with the IDER rulemaking (R.14-10-003).
- Role of the California Technical Forum.
- Necessary updates to the Long Term Energy Efficiency Strategic Plan.

We do not include an anticipated schedule for any of the other listed items at this time, since it is uncertain if any activities are actually needed. We may issue additional rulings at a later date to clarify whether and how work on these items will proceed.

3. Schedule

The table below outlines a basic schedule that we intend to follow for the remaining issues in this proceeding for which activities are currently planned. The table is divided into areas for each of the topics addressed in Section 2.1 through 2.4 above. No activities are scheduled for any of the items in Section 2.5, but additional work may be scheduled at a later date.

In general, the schedule anticipates staff documents to be issued via Administrative Law Judge (ALJ) rulings, followed by opportunities for party comments on the various topics. Each ruling will further specify the exact dates for comments and reply comments to be due, and any other relevant details such as workshop dates or other planned activities.

In addition, workshops may be scheduled later on some of the topics. If there are any additional workshops in this proceeding, notice of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

Date	Event
Three Prong Fuel Substitution Test	
June 2018	Ruling issued with Commission staff proposal regarding Three Prong Test
June 2018	Workshop on Three Prong Test, if necessary
July 2018	Comments due on staff proposal
July 2018	Reply comments due on staff proposal
4 th Quarter 2018	Proposed Decision addressing Three Prong Test
Market Transformation	
July 2018	Ruling issued with a Commission Staff white paper or proposal regarding market transformation
July 2018	Workshop on market transformation
August 2018	Comments due on staff white paper or proposal on market transformation
September 2018	Reply comments due on staff white paper or proposal on market transformation
4 th Quarter 2018	Proposed Decision further addressing market transformation
Industrial and Custom Projects	
May-June 2018	Commission staff to reconvene Track 2 Working Group meetings, share the protocol for Service Level Agreements between program administrators and Commission staff with stakeholders (Task 6), and implement new protocols, as appropriate.
July 2018	Commission staff to issue draft resolution in response to September 7, 2017 working group report (Tasks 1-4)
December 2018	Commission staff to share draft updated ISP Guidance Document for review and comments (Task 5)

Date	Event
First Quarter 2019	ISP Guidance Document Finalized and posted (Task 5)
Accounting and Funding Issues	
September 2018	Ruling issued with a Commission staff proposal
October 2018	Comments due on staff proposal on accounting issues
October 2018	Reply comments due on staff proposal on accounting issues
1st Quarter 2019	Proposed Decision further addressing accounting issues

The assigned Commissioner or assigned ALJs may modify this schedule as necessary to promote the efficient management and fair resolution of this proceeding. Additional dates may be scheduled as additional issues within the scope are raised that must be addressed or decided.

It is the Commission's intent to complete this proceeding within 18 months of the date this Scoping Memo is filed. This deadline may be extended by order of the Commission. (Public Utilities Code Section 1701.5(a).)

4. Categorization, Need for Hearing, and Presiding Officer

As in previous Phases of this proceeding, we confirm that the categorization of this rulemaking is ratesetting and that hearings are not required. Anyone who disagrees with this categorization must file an appeal of the categorization no later than ten days after the date of this scoping ruling (See Rule 7.6).

Carla J. Peterman is the assigned Commissioner and Julie A. Fitch and Valerie U. Kao are the assigned ALJs. Pursuant to Public Utilities Code Section 1701.3 and Rule 13.2, Julie A. Fitch and Valerie U. Kao are designated as Presiding Officers.

5. Ex Parte Communications

In a ratesetting proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors, and the ALJs are only

permitted as described in Public Utilities Code Section 1701.3(c) and Article 8 of the Rules.⁶

Interested persons are advised that the Office of Administrative Law has approved amendments to the Rules of Practice and Procedure, implementing statutory amendments pursuant to SB 215, 2016-2017 Reg. Sess. (Ca. 2017); the amended Rules are effective as of April 1, 2018.

6. Filing, Service, and Service List

The official service list is on the Commission's web site. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the ALJs. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's web site.

This proceeding continues to follow the electronic service protocols set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded, when serving copies of documents, that the document format must be consistent with the requirements set forth in Rules 1.5 and 1.6.

In this proceeding, parties are directed to serve documents to the assigned ALJs and assigned Commissioner and advisors in electronic format only. Parties are directed not to serve a paper copy on the assigned ALJs or assigned Commissioner.

Persons who are not parties but who wish to receive electronic service of documents filed in the proceeding may contact the Process Office at

⁶ Interested persons are advised that, to the extent that the requirements of Rule 8.1 et seq. deviate from Public Utilities Code Section 1701.1 and 1701.3 as amended by SB 215, effective January 1, 2017, the statutory provisions govern.

process_office@cpuc.ca.gov to request addition to the “Information Only” category of the official service list pursuant to Rule 1.9(f).

7. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or who has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at (866)849-8390 or (415)703-2074 or (866)836-7825 (TTY), or send an email to public.advisor@cpuc.ca.gov.

IT IS RULED that:

1. The scope of Phase III of this proceeding is as described herein.
2. This proceeding will be completed within 18 months of the date of this amended Scoping Memo.
3. Hearings are determined not to be needed for Phase III of this proceeding.
4. The schedule for the proceeding is set as described herein.
5. The assigned Commissioner and/or Administrative Law Judges may adjust this schedule as necessary for efficient management and fair resolution of this proceeding.
6. With limited exceptions that are subject to reporting requirements, *ex parte* communications are prohibited. (See Public Utilities Code Section 1701.3(h); Article 8 of the Commission’s Rules of Practice and Procedure.)

Dated April 26, 2018, at San Francisco, California.

/s/ CARLA J. PETERMAN

Carla J. Peterman
Assigned Commissioner

/s/ JULIE A. FITCH

Julie A. Fitch
Administrative Law Judge

/s/ VALERIE U. KAO

Valerie U. Kao
Administrative Law Judge